EXCERPTS FROM ORDER TO JAPANESE GOVERNMENT ISSUED BY SUPREME COMMANDER FOR THE ALLIED POWERS, APRIL 19, 1946

SCAPIN 885, 19 April 1946

all identifiable looted property which is now in Japan and which has been the subject of transfer under duress, wrongful acts of confiscation, dispossession or spoliation, whether pursuant to legislation or by procedure purporting to follow forms of law or otherwise, in areas occupied by the Japanese Armed Forces since 7 July 1937.

TREATY OF PEACE WITH JAPAN, ARTICLE 15(a)

U. S. Code Congressional and Administrative Service (1951), pp. 2737, 2738

(a) Upon application made within nine months of the coming into force of the present Treaty between Japan and the Allied Power concerned, Japan will, within six months of the date of such application, return the property, tangible and intangible, and all rights or interests of any kind in Japan of each Allied Power and its nationals which was within Japan at any time between December 7, 1941, and September 2, 1945, unless the owner has freely disposed thereof without duress or fraud. Such property shall be returned free of all encumbrances and charges to which it may have become subject because of the war and without any charges for its return. Property whose return is not applied for by or on behalf of the owner or by his Government within the prescribed period may be disposed of by the Japanese Government as it may determine. In cases where such property was within Japan on December 7, 1941, and cannot be returned or has suffered injury or damage as a result of the war, compensation will be made on terms not less favorable than the terms provided in the draft Allied Powers Property Compensation Law approved by the Japanese Cabinet on July 13, 1951.

Statutes

TRADING WITH THE ENEMY ACT, SECTION 5(b)
TITLE 50, U.S.C., APP. § 5(b)

§ 5. Suspension of provisions relating to ally of enemy; regulation of transaction in foreign exchange of gold or silver.

* * * *

(b)(1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or

person may perform any and all acts incident to the accomplishment or furtherance of these purposes; * * *

TRADING WITH THE ENEMY ACT, SECTION 9(a)
TITLE 50, U.S.C., APP. § 9(a)

§ 9. Claims to property transferred to custodian; notice of claim; filing; return of property; suits to recover.

(a) Any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from any enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of

Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian of the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act [sections 1-6 and 7-39 of this Appendix] and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

TRADING WITH THE ENEMY ACT, SECTION 32(a)
TITLE 50, U.S.C. APP. § 32(a)

32. Return of property—(a) Conditions precedent

The President, or such officer or agency as he may designate, may return any property or interest vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the net proceeds thereof, whenever the President or such officer or agency shall determine—

(1) that the person who had filed a notice of claim for return, in such form as the President or such

officer or agency may prescribe, was the owner of such property or interest immediately prior to its vesting in or transfer to the Alien Property Custodian, or is the legal representative (whether or not appointed by a court in the United States), or successor in interest by inheritance, devise, bequest, or operation of law, of such owner; and * * *

Executive and Legislative Policy Pronouncements

EXCERPTS FROM JOINT LETTER OF SECRETARY OF STATE, THE ATTORNEY GENERAL AND THE ALIEN PROPERTY CUSTODIAN TO THE CHAIRMAN, JUDICIARY COMMITTEE, HOUSE OF REPRESENTATIVES, JUNE 29, 1945

Hearing before Subcommittee 1 of House Judiciary Committee on H.R. 3750, September 12, 1945, Serial No. 7, p. 4

The President, or such officer or agent as he may designate, would be required, before making any return of property, to determine that the claimant had owned property immediately prior to the vesting. It is contemplated that in determining who was the actual owner at that time, consideration will be given to the question of whether any property claimed had been transferred to enemy ownership under duress. If such were the case, the non-enemy who was forced to make the transfer would normally be recognized as the true owner immediately prior to vesting.

EXCERPTS FROM REPORTS OF SENATE AND HOUSE JUDICIARY COMMITTEES ON H.R. 4571 TO AMEND THE FIRST WAR POWERS ACT, 1941

Senate Report No. 920, 79th Cong. 2d Sess. pp. 3, 4
House Report No. 1269, 79th Cong. 1st Sess. p. 4

In construing who was the "owner" immediately prior to vesting, acts of enemy governments which sought to

divest non-enemies of their property or rights, either directly or by purported confiscation or by the exercise of duress upon the owner, would be ignored and the victim of such an act would be regarded as the "owner" for purposes of this statute.

EXCERPTS FROM DEPARTMENT OF STATE PRESS RELEASE AND LETTER OF ACTING LEGAL ADVISER, APRIL 27, 1949

Department of State Bulletin, Vol. XX, May 8, 1949, pp. 592-593

The letter repeats this Government's opposition to forcible acts of dispossession of a discriminatory and confiscatory nature practiced by the Germans on the countries or peoples subject to their controls; states that it is this Government's policy to undo the forced transfers and restitute identifiable property to the victims of Nazi persecution wrongfully deprived of such property; and sets forth that the policy of the Executive, with respect to claims asserted in the United States for restitution of such property, is to relieve American courts from any restraint upon the exercise of their jurisdiction to pass upon the validity of the acts of Nazi officials.

* * * * *

You have inquired whether the Department might care to express its view concerning the Executive policy of this Government with respect to the exercise by courts of this country of jurisdiction in such cases. The Department considers the matter an important one and is pleased to express its views as follows:

1. This Government has consistently opposed the forcible acts of dispossession of a discriminatory and confiscatory nature practiced by the Germans on the countries or peoples subject to their controls. In this connection reference is made to the following:

a. Inter-Allied Declaration against Acts of Dispossession of January 5, 1943, United States Economic Policy toward Germany (Dep't State Pub. 2630) 52;

b. Gold Declaration of February 22, 1944, 9 Fed. Reg. 2096 (1944);

c. The Potsdam Agreement of August 2, 1945, 13 Dep't State Bull. 153 (1945);

d. Directive to the Commander-in-Chief of the United States Forces of Occupation Regarding the Military Government of Germany, April 1945, JCS 1067, paragraphs 4(d), 48(e)(2), 13 Dep't State Bull. 596 (1945);

e. Directive to Commander-in-Chief of United States Forces of Occupation Regarding the Military Government of Germany, July 11, 1947, paragraph 17d, 17 Dep't State Bull. 186 (1947);

f. Law No. 1 of the Allied Control Council (Off. Gaz. of the Control Council for Germ. No. 1, Oct. 29, 1945);

g. Military Government Law No. 1 (Mil. Gov. Gaz.—U. S. Zone June 1, 1946);

h. Military Government Law No. 52, secs. 1(f), 2 (Mil. Gov. Gaz.—U.S. Zone June 1, 1946);

i. Military Government Law No. 59 on Restitution of Identifiable Property (Mil. Gov. Gaz.—U. S. Zone Nov. 10, 1947).

• • • •

3. The policy of the Executive with respect to claims asserted in the United States for the restitution of identifiable property (or compensation in lieu thereof) lost through force, coercion, or duress as a result of Nazi persecution in Germany, is to relieve American courts from any restraint upon the exercise of their jurisdiction to pass upon the validity of the acts of Nazi officials.

APPENDIX B

Opinion of the Court of Appeals for the District of Columbia Circuit

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,807

BANK OF THE PHILIPPINE ISLANDS, APPELLANT,

v.

WILLIAM P. ROGERS, Attorney General of the United States and Successor to the Philippine Alien Property Administrator, et al., APPELLEES.

No. 14,808

PHILIPPINE NATIONAL BANK, A Philippine Corporation, APPELLANT,

v.

WILLIAM P. ROGERS, Attorney General of the United States and Successor to the Philippine Alien Property Administrator, et al., APPELLEES.

Appeals from the United States District Court for the District of Columbia

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Decided November 5, 1959

Mr. Joseph B. Friedman, with whom *Mr. Melville E. Locker* was on the brief, for appellant in No. 14,807.

Mr. Matthew E. McCarthy, with whom *Messrs. William H. Matthews and Ben Ivan Melnicoff* were on the brief, for appellant in No. 14,808.

Mr. Irwin A. Seibel, Attorney, Department of Justice, with whom *Messrs. George B. Searls and Sidney Harris*, Attorneys, Department of Justice, were on the brief, for appellees.

Before WASHINGTON, DANAHER and BURGER, Circuit Judges.

WASHINGTON, *Circuit Judge*: These are separate appeals from a judgment of the District Court in favor of the defendants and against each of the plaintiffs in two civil actions consolidated for trial, which arose under Section 9(a) of the Trading With the Enemy Act, 40 Stat. 419 (1917), as amended, 50 U.S.C.App. § 9(a) (1952), and the Fifth Amendment. The actions were brought by the Bank of the Philippine Islands (BPI) and the Philippine National Bank (PNB) against the Treasurer of the United States and the Attorney General, as successor in interest to the Philippine Alien Property Administrator, for recovery of certain pre-World War II Philippine currency amounting to ₱ 951,387, of which ₱ 662,387 were in Philippine Treasury Certificates and ₱ 289,000 were in Philippine National Bank Notes. This currency was discovered in March of 1945 by the American Armed Forces in a hiding place in the mountains near Bacolod, on the Island of Negros, in the Philippines. The parties agree that it must have been buried there by the Japanese Army, which was in retreat from the American advance. The currency was vested as enemy-owned property by the Philippine Alien Property Administrator of the United States, pursuant to Vesting Order P-285 of August 5, 1947.[1]

The published opinion of Judge Tamm, the trial judge, fully sets forth the issues of fact and law presented to him. He accepted BPI's assertion that in March 1943, pursuant to a Japanese Military Order, it transferred ₱ 638,000 to Nampo Kaihatsu Kinko (Nampo), a bank

[1] The Vesting Order is reprinted in the opinion of the District Court. 165 F.Supp. 100, 102 (D. D.C. 1958).

which was financial agent for the Japanese Military Administration in the Philippine Islands. In return BPI received Japanese Military Notes. The court also accepted, arguendo, the assertion that Nampo commingled the currency from BPI with currency similarly obtained from PNB in Manila, and that a portion of this fund was transferred by Nampo to the Bacolod Branch of PNB. The currency was used in the Island of Visayan to redeem certain emergency currency issued by the Commonwealth Government of the Philippine Islands shortly prior to the Japanese occupation. But a portion of the commingled pesos remained at the Bacolod Branch until March 1945 without having been used for redemption. On March 2, 1945, the residue of this redemption fund was transferred pursuant to another Japanese Military Order to the Bocolod Branch of the Bank of Taiwan, an agent of the Japanese Military Administration. *Bank of the Philippine Islands* v. *Rogers*, 165 F.Supp. 100, 104-09 (D. D.C. 1958).

The District Court's opinion concluded by saying that "It has not been proven by a preponderance of the evidence that the money captured by the United States Army was the same money that the Philippine National Bank, Bacolod branch, turned over to the Bank of Taiwan in March, 1945. Thus, neither plaintiff has carried the burden of proof that is necessary in this proceeding to establish [as required by Section 9(a)] a legal or equitable title in the vested property." 165 F.Supp. at 110. The trial judge properly framed the critical issue of fact. Conceivably two issues might have been presented in connection with the identity of the recovered money: whether or not it had come from the Bank of Taiwan at Bacolod, and, if so, whether or not it represented any part of the money transferred from PNB, Bacolod, to the Bank of Taiwan. If appellants had offered evidence of a wrongful commingling at the Bank of Taiwan, perhaps it would have been necessary only to show that the recovered cur-

rency came from the Bank of Taiwan. RESTATEMENT, RESTITUTION § 211 (1937). But no evidence of wrongful commingling at the Bank of Taiwan was adduced. Thus, the trial court properly ruled that appellants had to prove that "the vested money was the same money that was taken [by the Bank of Taiwan] from the Bacolod branch of the Philippine National Bank in March, 1945." *Bank of Philippine Islands* v. *Rogers*, *supra* at 108.

Appellant's primary witness in support of the identity of the currency was Mr. Jose V. Buenaventura. The trial court considered that his credibility was seriously impaired. *Ibid.* Apart from Mr. Buenaventura's testimony, the only evidence relevant to the source of the vested currency was the proximity of the recovered money to Bacolod and the nature of the boxes in which it was found. The boxes were of the type commonly used by Japanese banks to pack currency, and were labeled with Japanese characters. As the trial court pointed out, the place where and the containers in which the currency was found could support a number of inferences concerning the source of the currency. *Id.* at 106-07. Among other possibilities, the recovered currency could well have come from a fund existing at the Bank of Taiwan prior to receipt of the pesos from PNB, Bacolod. Consequently, we think the trial court correctly held that appellants had not sustained their burden of proof. Although the phrase "preponderance of the evidence" is used, it is clear that the claimants' burden is one of persuasion as well as of going forward. The United States need not produce evidence until that burden of persuasion is met. See *Sturchler* v. *Hicks*, 17 F.2d 321 (E.D. N.Y. 1926).

We do not feel compelled to relax this burden in cases where, as in this, the friendly nationality of the claimants is unquestioned. Under all circumstances the Trading With the Enemy Act contemplates that seized property or the proceeds thereof will assist in compensating parties injured by enemy action. Thus, the seized currency will,

on the failure of proof by PNB and BPI, be used to compensate debt claimants against the Japanese, see the Trading With the Enemy Act, 60 Stat. 925 (1946), 50 U.S.C.App. § 34 (1952), and any remainder will be returned to the Philippine Government. Philippine Property Act of 1946, as amended, 60 Stat. 418, 22 U.S.C. § 1382 (1958). Further, BPI and PNB themselves may have claims against the Japanese Government, or recourse to their own courts or legislature if the funds are returned to the Philippine Government. In light of these alternatives, and because other parties have interests which are affected by the allowance of claims under Section 9, the burden of proof which the trial court imposed was not only authorized by the Act but a reasonable one as well.

Nor was it error to refuse to admit BPI Exhibits 1 and 2 to prove the identity of the vested currency. Exhibit 1 was Vesting Order P-285, cited above, which contained the recital that the vested currency was "the balance of the money deposited by the Southern Regions Development Bank (Nampo Kaihatu Kinko) with the Philippine National Bank, Bacolod Branch, which was captured by the American Forces late in March 1945." The official who signed the vesting order was obliged only to determine that the currency was "owned or controlled by, . . . held on behalf of . . ., or owing to, or which is evidence of ownership or control by a designated enemy country or national . . . [and that control of it was] necessary for the maintenance or safeguarding of other property belonging to the same designated enemy country or the same national thereof and subject to vesting . . . ." Ex. Order No. 9095, 7 FED.REG. 1971 (1942), as amended, Ex. Order No. 9193, 7 FED.REG. 5205 (1942), and Ex. Order No. 9567, 10 FED.REG. 6917 (1945). No challenge has been made to the validity of the vesting order: hence, we need not consider whether the determination of "necessity" was made. It is clear, however, that the recital of the source of the currency was unessential and properly excluded

since the surrounding circumstances, including the labeling on the packing boxes, sufficed to save from being arbitrary the conclusion that the vested property was Japanese. Accordingly, no presumption of correctness or trustworthiness attaches to the quoted recital in a suit de novo under Section 9(a) to determine the issue judicially, nor can the recital estop the Government. See *United States* v. *Foster*, 131 F.2d 3, 7 (8th Cir. 1942), cert. denied, 318 U.S. 767 (1943). Nothing in *United States* v. *Chemical Foundation*, 272 U.S. 1 (1926), requires a contrary result: there, the Government sought to set aside official action, and failed to sustain its burden of proof when it challenged jurisdictional findings made by the administrative official.

Similar considerations apply to the refusal of the District Court to admit in evidence BPI's Exhibit 2, comprising various administrative findings made in a proceeding brought by BPI under Section 32 of the Trading With the Enemy Act, which terminated adversely to it. These findings tended to support BPI's contention that the vested money was what was left of the money turned over by the Bacolod Branch of the PNB to the Bank of Taiwan. But these findings were not reports of personal investigation; they were conclusions based on evidence then available—an administrative interpretation not entitled to be given probative effect in a suit de novo dealing with the same questions. *Third National Bank & Trust Co.* v. *United States*, 53 F.2d 599 (6th Cir. 1931). The findings were not admissible, therefore, as proof in support of PBI's contentions, or as estopping the Government from insisting that the complainants bear the burden of proof.

Because the trial court's rulings with respect to the burden of proof and the admission of evidence were not in error, we need not reach the issues of law argued by the parties. The judgment below is

Affirmed.

Petition of the Bank of the Philippine Islands for Rehearing or Rehearing En Banc

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,807

BANK OF THE PHILIPPINE ISLANDS, Plaza Cervantes, Manila, Philippines, APPELLANT,

v.

WILLIAM P. ROGERS, Attorney General of the United States of America and Successor to the Philippine Alien Property Administrator,

and

IVY BAKER PRIEST, Treasurer of the United States of America, APPELLEES.

No. 14,808

PHILIPPINE NATIONAL BANK, A Philippine corporation having its principal place of business in Manila, Philippines, APPELLANT,

v.

WILLIAM P. ROGERS, Attorney General of the United States of America and Successor to the Philippine Alien Property Administrator,

and

IVY BAKER PRIEST, Treasurer of the United States of America, APPELLEES.

Appeals From the United States District Court for the District of Columbia

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PETITION OF BANK OF THE PHILIPPINE ISLANDS FOR REHEARING OR REHEARING EN BANC

Pursuant to Rule 26 of the Rules of this Court, the Appellant in No. 14,807, Bank of the Philippine Islands (BPI), petitions this Court for a rehearing or rehearing en banc of its appeal, decided November 5, 1959, in favor of Appellees. A motion to extend until December 19, 1959, the time for filing petitions for rehearing was granted by this Court on November 27, 1959. By Order dated November 30, 1959, this Court also stayed, until December 21, 1959, the transmission of the opinion and judgment.

The grounds upon which Appellant BPI requests such rehearings are as follows:

The decision of November 5, 1959, is based solely upon the conclusion that the trial court did not err in holding that "It has not been proven by a preponderance of the evidence that the money captured by the United States Army [the money which Appellants BPI and PNB seek to recover by suits under Section 9(a) of the Trading With the Enemy Act, as amended, 50 U.S.C. App. Sec. 9(a)] was the same money that the Philippine National Bank, Bacolod branch, turned over to the Bank of Taiwan in March, 1945." (Decision, pp. 3, 4) This conclusion, in turn, depends entirely on the ruling of the trial court, affirmed by the decision of November 5, 1959, excluding from evidence Vesting Order P-285, issued by the predecessor of the Appellee Attorney General, pursuant to which the money in question was seized by the United States, and the Findings of Fact made by the Director of the Office of Alien Property in his Decision in an administrative proceeding to recover such money brought by the present Appellants under Section 32 of the Trading With the Enemy Act. (Decision, pp. 5, 6)

Both the Vesting Order and the Decision of the Director of the Office of Alien Property specifically found as a fact that the money captured by the United States Army and subsequently vested was the same money as that turned over to the Bank of Taiwan in March, 1945. (J.A. 189, 190, 199, 201-203) These findings of fact, made pursuant to statutory direction, were not challenged or disputed by Appellees either at the trial or on appeal. Nor does the record contain a scintilla of evidence contradicting or throwing any doubt on the accuracy of such findings. Nevertheless, the trial court held that the Vesting Order and Decision of the Director of the Office of Alien Property were not admissible in evidence as proof of the identity of the money, and the decision of this Court of November 5, 1959, affirmed that ruling. (J.A. 17-25; Decision, pp. 5, 6).

If the Vesting Order and Decision of the Director had been admitted in evidence, both the trial court and this Court would have been compelled to conclude that the captured money was the same as that turned over to the Bank of Taiwan in March, 1945, because this was found as a fact in both the Vesting Order and Decision and because the record contains not a shred of evidence to the contrary.

In these circumstances, Appellant BPI respectfully urges:

1. The exclusion by the trial court of the Vesting Order and Decision, and the affirmance of that ruling in the decision of this Court of November 5, 1959, are clearly erroneous as directly contrary to the decision of the United States Supreme Court in *United States* v. *Chemical Foundation*, 272 U.S. 1, 14, 15. (See also, *Heath* v. *Wallace*, 138 U.S. 573, 582, 585; *Vanadium Corporation* v. *Fidelity & Deposit Co.* (CCA 2), 159 F(2d) 105, 109, 110; *Quinn* v. *United States* (CCA 3), 58 F(2) 19, 20; *Woods* v.

Turk (CCA 5), 171 F(2d) 244, 245; *Kolar* v. *Woods* (CCA 5) 189 F(2d) 736, 739.)

2. In the circumstances of this case, including absence of witnesses because of battle conditions at the time the vested money was captured, the exclusion of the Vesting Order and the Director's Decision constituted a "denial of a hearing," and, consequently, a denial of due process of law to Appellant BPI in contravention of the Fifth Amendment. *Georgia Railway & Electric Co.* v. *City of Decatur*, 295 U.S. 165, 171. See also, *Saunders* v. *Shaw*, 244 U.S. 317, 319.

3. The exclusion of the Vesting Order and Director's Decision severely restricts the remedy granted by Section 9(a) of the Trading With the Enemy Act and, hence, denies to Appellant BPI the substantive rights guaranteed to United States citizens and non-enemies alike by the Fifth Amendment. *Becker Steel Co.* v. *Cummings*, 296 U.S. 74, 79, 80. (See also, *Clark* v. *Uebersee Finanz-Korporation, A.G.*, 332 U.S. 480, 490; *Guessefeldt* v. *McGrath*, 342 U.S. 308, 318; *Kaufman* v. *Societe Internationale Pour Participations Industrielles et Commerciales, S.A.*, 343 U.S. 156; *Russian Volunteer Fleet* v. *United States*, 282 U.S. 481.)

4. This Court's definition of the nature of the burden of proof resting on Appellants as regards the identification of the vested property is directly contrary to the rule prescribed for cases of this kind by International Agreements between the United States and its Allies. (*Directive On Restitution, Far Eastern Commission*, July 29, 1948; *Directive to SCAP*, Department of State, Documents and State Papers, Vol. I, No. 6, September, 1948, p. 429). Application of the correct rule of proof required reversal of the trial court's decision, *even if* the Vesting Order and Decision had *been properly* excluded from evidence.

1. THIS COURT'S DECISION OF NOVEMBER 5, 1959, CONSTITUTES A DENIAL OF DUE PROCESS OF LAW TO APPELLANT BPI

This petition for rehearing is based not only upon the opinion of counsel for Appellant BPI that the decision of this Court of November 5, 1959, is erroneous as a matter of law, but, more importantly, upon the conviction of counsel that the decision denies important constitutional rights to Appellant BPI.

What is involved here is not a simple issue of admissibility of evidence, but rather the issue of whether Appellant BPI has been denied procedural and substantive rights guaranteed by the Constitution. It is the opinion of counsel that the exclusion of evidence upon which the decision of November 5, 1959, rests constitutes a denial of due process. Specifically, it denies Appellant BPI, which is a non-enemy, the constitutional right to a hearing on the issue of whether the money captured by the United States Army is the same money as that claimed by Appellant BPI. The additional effect of the decision is to deny to Appellant BPI the remedy prescribed in Section 9(a) of the Trading With the Enemy Act and, thereby, to deny to Appellant its substantive rights under the Fifth Amendment.

In order to recover vested property under Section 9(a), a non-enemy alien, like an American citizen, must show a right, title or interest in the property vested by the Alien Property Custodian.

In this case, the opportunity to prove that essential fact depended upon Appellant's being able to show that the money captured by the United States Army near Bacolod, Negros, and vested by the Alien Property Custodian, was the same money that was turned over to the Bank of Taiwan in March, 1945, a few weeks before the money was captured.

The money in question was found on the battlefield. In the very nature of things, there were no witnesses who were able directly to trace the money every step of the way from the time it was delivered to the Bank of Taiwan early in March, then taken by Japanese troops from the Bank of Taiwan to a place in the mountains about ten miles away where it was buried, and shortly thereafter, captured by the United States armed forces. The simple fact is that witnesses never have been available who were capable of testifying directly to all of this chain of circumstances.

However, competent and completely trustworthy and authoritative evidence as to the identity of the money was available in the form of the Vesting Order itself and the decision of the Director of the office of Alien Property. Both the Vesting Order and the Decision specifically found as a fact that the money captured by the United States Army was the very same money as that turned over to the Bank of Taiwan in March 1945. (J.A. 189, 190, 199, 201, 202)

As will be demonstrated in Points 2 and 3 below, these findings which were made pursuant to statutory duty after extensive investigations and hearings, were, under applicable decisions of the United States Supreme Court and various Courts of Appeal, *not only competent evidence of such facts, but also*, the findings being unchallenged and uncontroverted by Appellees or by any evidence in the record, *conclusive proof of such facts.*

When, at the trial, these official findings of Appellee Attorney General and his representatives were offered in evidence as proof of this essential fact, Appellees' lawyers did not contest in any way the truth and accuracy of the findings. The Government did *not* say that the findings, arrived at after the most careful investigation and after the taking and weighing of voluminous evidence, were wrong or inaccurate. Nor did the Government in-

troduce any evidence casting the slightest doubt on the validity of such findings. It merely said that the findings were not evidence and should be ignored. (J.A. 17-25) The trial court accepted this strange conclusion and rejected the evidence, and this Court affirmed.

In this context, what the trial court and this Court have really said, therefore, is that even though there is trustworthy evidence of the identity of the two funds which would enable appellant BPI to proceed with the proof of its case, it will decline to look at such evidence.

The erroneous ruling of the trial court excluding the Vesting Order and Director's Decision and the affirmance of that ruling by this Court in its opinion of November 5, 1959, have effectively *deprived Appellant BPI of its right to present evidence* bearing upon the crucial issue of the identity of the vested money and the money claimed by Appellant. And the deprivation of the right to present evidence on that issue upon which the claim of Appellant to the vested property necessarily depends, has, plainly and simply, *denied to Appellant BPI its "day in Court."*

It has long been established that the "due process" clauses of the Fifth and Fourteenth Amendments to the Constitution prohibit courts as well as legislatures from deciding a case against a person without granting him "a proper opportunity to present his evidence." And the Supreme Court has held, on various occasions, that a denial of the opportunity to present evidence such as has resulted from this Court's decision of November 5, 1959, constitutes a denial of a hearing in violation of the due process of law clauses of the Constitution. *Georgia Railway & Electric Co.* v. *City of Decatur*, 295 U.S. 165, 171; *Saunders* v. *Shaw*, 244 U.S. 317, 319.

In the *Georgia Railway & Electric* case, *supra*, which involved, as does the present case, an erroneous exclusion of evidence, the Supreme Court stated (295 U.S. 171):

> "Certainly, competent proof tending to overcome a rebuttable presumption of material fact cannot be immaterial; and the refusal of a court to receive or consider any proof whatever on the subject amounts to a denial of a hearing on that issue, in contravention of the due process of law clause of the Constitution."

And, in *Saunders* v. *Shaw, supra*, Mr. Justice Holmes indicated the constitutional defect of this Court's decision of November 5, 1959, in the following terms (244 U.S. 319):

> "Probably the majority of the supreme court thought that it was so plain on the uncontroverted facts that the case was within the principle of the Myles Salt Co. Case that to remand it would be an empty form, —a mere concession to technicality. It may turn out so, but we do not see in the record an absolute warrant for the assumption, and therefore cannot be sure that the defendant's rights are protected without giving him a chance to put his evidence in."

Moreover, the erroneous exclusion of the Vesting Order and Director's Decision constitutes a denial of Appellant's constitutional rights for a further reason. In the circumstances of this case, the exclusion of this evidence is such a restriction of the remedy afforded by Section 9(a) of the Trading with the Enemy Act to American citizens and non-enemy aliens as to amount to a denial of the remedy itself. For, if Appellant BPI is to be denied the right to offer the unchallenged findings of fact in the Vesting Order and Decision of the Director as proof of the crucial issue of identity of funds, it is effectively denied any opportunity to establish its entitlement to the vested property as prescribed by Section 9(a).

The Supreme Court has made it clear on several occasions that American citizens and non-enemy aliens have a constitutional right to recover their property which has been vested by the Alien Property Custodian, and that

any withdrawal or curtailment of the remedy prescribed by Section 9(a) of the Trading with the Enemy Act would render that Section of doubtful constitutionality.

In *Becker Steel Co.* v. *Cummings*, 296 U.S. 74, the Supreme Court stated (296 U.S., 79, 80):

> "The seizure and detention which the statute commands and the denial of any remedy except that afforded by Sec. 9(a) would be of doubtful constitutionality if the remedy given were inadequate to secure to the non-enemy owner either the return of his property or compensation for it. • • • The implication that by appropriation of private property to public use the United States undertakes to make just compensation for it • • • must likewise enter into the construction of a statute giving to a non-enemy a remedy for the seizure of his property as a war measure. Only compelling language in the congressional enactment will be construed as withdrawing or curtailing the privilege of suit against the Government granted in recognition of an obligation imposed by the Constitution. • • • Hence 9(a) must be broadly construed to give effect to its remedial purpose • • •"

See also, *Gussefeldt* v. *McGrath*, 342 U.S. 308, 317, 318; *Kaufman* v. *Societe Internationale Pour Participations Industrielles et Commerciales, S.A.*, 343 U.S. 156; *Clark* v. *Uebersee Finanz Korp. A.G.*, 332 U.S. 480, 487, 488; *Russian Volunteer Fleet* v. *United States*, 282 U.S. 481.

2. The Vesting Order and Director's Decision Issued Pursuant to Statutory Duty After Extensive Investigations and Hearings Found as a Fact That the Money Captured Was the Same Money as That Claimed by Appellant BPI.

The Vesting Order was issued by the predecessor of Appellee Attorney General. In issuing the Order, he acted pursuant to the provisions of the Trading With the Enemy Act. Under that Act, the validity of the Vesting

Order depended upon his finding, as a fact, that the property sought to be vested was enemy owned.

Appellees expressly admitted this in their brief. (Brief of Appellees, p. 24).

As appears from the Vesting Order (J.A. 189, 190), the only basis for the conclusion of the Custodian that the vested currency was "enemy owned" (by Japan) was the finding of fact in the Vesting Order that the vested currency was "the balance of the money deposited by the Southern Regions Development Bank (Nampo Kaihatu Kinko) with the Philippine National Bank, Bacolod branch, which were captured by the American forces late in March 1945."

The record clearly shows that the vested currency was, when captured by the American armed forces, buried in the mountains near Bacolod, Negros. (J.A. 17-25, 165-173, 180, 185, 186, 188, 189, 199, 203, 212-216, 300, 301, 312, 313, 316). Thus, when the currency was found it was not in the hands of the Japanese and there was nothing found with it to prove that it was owned by the Japanese. At that point the Alien Property Custodian could not properly exercise his vesting powers under the Trading With the Enemy Act because he had no basis for concluding that the currency was owned by the Japanese.[1] *Accordingly he made an investigation which lasted over two years.* Finally, on August 5, 1947, he issued Vesting Order P-285 (J.A. 189, 190). As is shown by the Vesting Order itself, the only basis upon which the Custodian,

[1] Since the Japanese were in absolute control of the Philippines, the fact that the boxes in which the money was found had Japanese characters marked on them (see Decision, p. 6) was, in no sense, evidence of ownership of the money by the Japanese Government. Even where property taken by the Japanese in occupied areas was physically present in Japan itself, the United States and its Allies uniformly held that the property taken to Japan did not belong to the Japanese.

after two years of investigation, was able to conclude that the currency in question was owned by the Japanese and, hence, subject to his vesting powers, was that it was the balance of the money which had been delivered by the Japanese Bank, Nampo, to the Philippine National Bank at Bacolod, and turned over in March, 1945, to the Bank of Taiwan. He set forth this fact in the Vesting Order as the basis of his legal authority to vest. In these circumstances, Appellees' suggestion that this finding of fact was not "essential" to the Vesting Order borders on the preposterous.

The Decision of the Director of the Office of Alien Property, who acted for Appellee Attorney General and whose Decision was approved by the Attorney General, was rendered in an administrative proceeding conducted pursuant to the authority conferred by Section 32 of the Trading With the Enemy Act. It was instituted by present Appellants in an effort to recover administratively the very property sued for here. Section 32 authorizes the administrative return of vested property when it is determined that the person filing claim for return "was the owner of such property or interest immediately prior to its vesting," provided certain other eligibility requirements are met. In the administrative proceeding brought by Appellants under Section 32, as in the present case, one of the issues necessarily involved was whether the money captured by the United States Army was the same money as that delivered to the Bank of Taiwan in March 1945. The Director of the Office of Alien Property conducted protracted hearings on this and other issues. At these hearings, voluminous evidence, both testimonial and documentary, was presented. After the most careful consideration of all of this evidence, not only by a trial examiner, but also, on review, by the Director, the Director concluded, in the most detailed and specific manner possible, that the money captured by the United States

Army was the very same money as that which was turned over to the Bank of Taiwan in March 1945. And, before the Director's Decision became final, it was reviewed and approved by Appellee Attorney General.

If the Courts are to be concerned, as the Supreme Court has said that they are, with the presumptive validity of official acts, it is difficult to conceive of a situation where official findings should be entitled to more weight than here.

The strangeness of the Government's contention that these unchallenged official findings made pursuant to statutory authority and duty should be totally ignored is emphasized by the fact that the Regulations of the Office of Alien Property specifically provide that in administrative proceedings, a "presumption of the accuracy and the validity of the findings in a vesting order as to ownership of the property immediately prior to vesting shall be operative in all claims." (J.A. 18), (8 C.F.R. Sec. 502.13(g)).

The intrinsic trustworthiness of the findings of fact in the Vesting Order and Director's Decision is fully confirmed by the evidence adduced at the trial which, independently of the Vesting Order and Decision, was sufficient to establish that the vested money was the same money as that turned over to the Bank of Taiwan in March, 1945. (J.A. 167, 169-173, 185, 189, 199, 202, 203, 212-216, 300, 301, 302.)

3. Decisions of the Supreme Court and Courts of Appeal Establish That the Unchallenged Findings of Fact Contained in the Vesting Order and the Director's Decision Are Conclusive Proof of Said Facts.

The decisions of the Supreme Court and various Courts of Appeal establish clearly and unequivocally that the

findings of fact in the Vesting Order and the Decision of the Director were not only admissible as proof of such facts, but also, the findings being unchallenged and uncontroverted by Appellees or by any evidence in the record, conclusive proof of such facts.

In *United States* v. *Chemical Foundation*, 272 U.S. 1, the United States Government sought to set aside a sale of vested property which had been made by the Alien Property Custodian. The Government, among other things, *challenged the findings of fact made in the order of sale issued by the Alien Property Custodian*, and alleged that the sale was made by the Custodian without knowledge of the material facts set forth in the order of sale and upon which that order was based. The lower court declined to review or challenge the findings of fact contained in the order of the Custodian. The Supreme Court upheld the ruling, stating (272 U.S. 14, 15):

> "The presumption of regularity supports the official acts of public officers and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties . . . *Under that presumption, it will be taken that Mr. Polk acted upon knowledge of the material facts. The validity of the reasons stated in the orders, or the basis of fact on which they rest, will not be reviewed by the courts.*" (Emphasis supplied)

It is clear that the present case is an even stronger one for the application of the foregoing rule than was the *Chemical Foundation* case, *supra*. *There, the Government itself challenged the accuracy of the findings of fact made by a former Alien Property Custodian.* Nevertheless, the court refused to upset such findings. *Here, the Government did not challenge the accuracy of the findings of fact in the Vesting Order and the Decision of the Director of the Office of Alien Property* (J.A. 17-25). Accordingly, there was no conceivable basis upon which the trial court should have refused to consider as conclusive

evidence the findings of fact in the Vesting Order and the Decision of the Director of the Office of Alien Property. For the same reason, the statement on page 6 of the decision of this Court of November 5, 1959, that the *Chemical Foundation* case is not applicable because the findings of the Custodian there were challenged by the Government, whereas here they are not challenged, is totally incomprehensible. *Did this Court really intend to say that official findings are more admissible when challenged or denied by the Government than when they are not challenged?*

The decision of the Director of the Office of Alien Property on the administrative claim filed by Appellants for the return of the vested property here involved (J.A. 196-203) contains equally specific and even more detailed findings of fact to the effect that the vested money is the *same* money as that delivered to the Bank of Taiwan in March 1945 (J.A. 199, 201-203).

As in the case of the Vesting Order, these specific findings of fact stand completely uncontested by Appellees and uncontroverted by any evidence in the record (J.A. 17-25).

The admissibility as evidence of the Decision of the Director is clearly established not only by the *Chemical Foundation case supra*, but also by other decisions of the Supreme Court and Courts of Appeal.

In *Quinn* v. *United States*, (CCA 3), 58 F(2d) 19, suit was brought against the United States on a war risk insurance policy. *The suit there, as here, was a de novo proceeding.* Plaintiff applied for payment of insurance on the ground of total and permanent disability. The Veterans' Bureau had disputed the claim and rejected it in an administrative proceeding. In attempting to sustain his burden of proving the service-connection of his disabilities and their total and permanent character,

plaintiff offered in evidence official documents of the Veterans' Bureau containing ratings, findings and rulings with regard to plaintiff's claim. The Government objected to the admission of these official documents on the ground that they were incompetent and irrelevant. This objection was overruled by the District Court. On appeal, the District Court's ruling was sustained by the Court of Appeals which stated (58 F(2d) 20):

> "Plaintiff's Exhibits 3, 4, and 5, official documents issued by the Veterans' Bureau, containing statements amounting to admissions and certain declarations against interest, were objected to, when offered, as incompetent and irrelevant.
>
> "It is true that ratings made by the bureau, and other rulings and findings of the directors and bureau, are incompetent and immaterial if attempted to be used as self-serving declarations, but we think they are relevant and admissible in this suit upon the war risk insurance policy, because, under the statute, unless his disabilities were service-connected, he could not recover (38 USCA § 471). For this purpose alone we think the exhibits were competent."

Precisely the same result was reached in *McGovern* v. *U. S.*, (D.C.C. Montana, 1923) 294 Fed. 108. See also, *Evanston* v. *Gunn*, 99 U.S. 666.

In the case of *Vanadium Corporation* v. *Fidelity and Deposit Co.*, (CCA 2) 159 F(2d) 105, a purchaser of certain mining leases covering land belonging to Indians sued the surety on a bond securing performance of the contract of sale of the leases. The contract of sale provided for the return of the purchase price if approval of the sale by the Secretary of Interior had not been obtained by reason of the failure of the seller to attempt in good faith to obtain the Secretary's approval. The plaintiff offered in evidence certain inter-departmental communications between the Assistant Secretary of the Interior in Washington, and the Assistant Commissioner of Indian Affairs in Chicago, and between the Assistant

Commissioner of Indian Affairs in Chicago and the General Superintendent of the Navajo Agency in Arizona. These documents were objected to as inadmissible hearsay. The objection was overruled by the trial court and the documents were admitted under the official records exception to the hearsay rule. This ruling of the trial court was sustained on appeal. In discussing the circumstances under which official records are admissible as proving or tending to prove the truth of the matters stated therein, Judge Clark stated (159 F(2d) 109, 110):

> "As applied here, *they should refer to matters such as admissions of the parties concerning the facts in issue or official action taken and the grounds therefor.*
>
> These are facts as to which the officer himself could have been subpoenaed to testify (of course to the inconvenience or disruption of the public service).
>
> Wgimore states the rule as turning upon the official's duty to act, that 'wherever there is a duty to do, then there is also an implied duty to record the things done.' • • •
>
> "It is to be noted that these are more than the mere report of some action already taken—'past recollection recorded'—but are the very fabric of decision itself. *Had the Assistant Secretary incorporated all this in an opinion reciting the steps he took and the grounds therefor, this would fall within Wigmore's statement last quoted; and undoubtedly the Assistant Secretary, in these days of critical examination of administrative action, would have been commended for his care and industry.* Here, however, we have brought before us the very steps as made, leading to the decision which he announces to the parties with his reasons. *His duty to hear and consider is therefore beyond dispute. And the evidence concerns the crucial issue of the reasons for his failure to approve. Since he himself stated his reasons, growing out of this very material,* to the parties in announcing his decision, the evidence might perhaps have been objected to as only cumulative. But *its relevancy is clear.*" (Emphasis supplied)

To similar effect, see *Kolar* v. *Woods* (CCA 5), 189 F(2d) 736, 739 (OPA registration statement admissible as prima facie proof of maximum legal rent); *Woods* v. *Turk*, 171 F(2d) 244, 245 (Order of Rent Director reducing rent unchallenged as to authenticity nor impeached by proof or testimony to the contrary conclusive on Court); *Heath* v. *Wallace*, 138 U.S. 573, 582, 585 (Decision of the Land Department as to question of fact within its jurisdiction conclusive upon Court).

4. THERE IS NO SUPPORT FOR THE GOVERNMENT'S VIEW THAT THE FINDINGS OF FACT CONTAINED IN THE VESTING ORDER ARE NOT BINDING BECAUSE THE FINDINGS WERE NOT ESSENTIAL TO THE ISSUANCE OF THE VESTING ORDER.

At the argument of these appeals, Appellees, in apparent recognition of the total irrelevancy of the cases cited by them at pages 21-28 of their brief and of their inability to distinguish the cases relied upon by Appellant BPI (some of which they did not even discuss), finally fell back on the extremely curious argument that the Vesting Order is not admissible as evidence of the unchallenged finding of fact contained therein on the ground that the Alien Property Custodian was "not required" to make the finding of fact in question and that it was not "essential" to the Vesting Order (Brief of Appellees, p. 24).

The only case cited by Appellees for this novel proposition and which was relied upon by this Court in its decision of November 5, 1959, stands for precisely the opposite, and, in fact, is direct authority for the contention of Appellant BPI. See, *United States* v. *Foster*, (CCA 8) 131 F(2d) 3, cert. denied 318 U.S. 767. (Brief of Appellees, p. 25), (Decision, p. 6). That case involved a condemnation proceeding brought by the United States. The statute pursuant to which the condemnation was made

specifically provided that "just compensation" for the taking "should be ascertained and awarded" in a judicial proceeding "and established by judgment therein." A "declaration of taking" filed by the Government set forth an "estimate" by the acquiring agency of "the sum of money" which it thought would constitute "just compensation." That "declaration of taking" was offered in evidence as an admission by the Government of the amount "estimated" by it to constitute "just compensation." This offer was properly refused by the Court on the grounds that: (1) Since the statute authorizing the condemnation specifically provided that "just compensation" should be determined in a judicial proceeding the "estimate" was no part of the official duties of the Government official who issued the "declaration of taking" and (2) Under the Constitution, the determination of "just compensation" is always a legal question for determination by the Courts and is never within the competence of an administrative agency. But the Court indicated clearly that in a situation like that involved in the present case, namely, a finding of fact within the competence of an administrative official of the United States Government, the ruling, order or decision containing such finding of fact would be receivable as an admission of such fact by the Government. The Court stated (131 F(2d) 7):

> "If these declarations by the Secretary of War were made in the performance of his duty and within the scope of his authority, it may well be that the Government would be bound. *City of Chicago* v. *Greer*, 9 Wall. 762, 19 L. Ed. 769."

For the reasons indicated above, there can be no dispute that the findings of fact in the Vesting Order and the Decision of the Director were made pursuant to the statutory duty of the officials concerned (Trading With the Enemy Act) and, hence, were clearly within the scope of their authority. Accordingly, under the Supreme Court decision in *Chicago* v. *Greer*, *supra*, the Government is

bound by such findings which constitute admissions by the Government's duly authorized agents.

Neither the Supreme Court in the *Chemical Foundation* case, *supra*, nor the numerous other Federal Courts in the decisions cited above even remotely suggested that the admissibility in evidence of the rulings, orders and decisions of the Alien Property Custodian and other agencies of the United States Government as proof of the findings of fact contained therein is dependent, in any way, upon a determination by the Court that such findings were *required* to be made. It is obviously sufficient that the findings were made in the performance of the official duties and within the scope of the authority of the governmental agency or official involved. That is particularly true where, as in the instant case, the Government does not challenge the accuracy of the findings of fact, and, thereby, in effect, admits their accuracy.

But even if the decisions required a determination of "essentiality" of findings of fact before rulings, orders, and decisions containing such findings are admissible as evidence of the facts, the argument of the Appellees is, as shown above, completely without merit in relation to the facts of the present case where the validity of the action taken by the Government depended upon the findings of fact in question.

5. Quite Apart From the Vesting Order and Director's Decision, a Liberal Rule of Identification Is Applicable and Requires the Conclusion That the Vested Money Is the Same as That Claimed by Appellant BPI.

The decision of this Court of November 5, 1959, is also patently in error in its definition of the nature of the burden of proof resting on Appellants in connection with the identification of the vested property. At page 5 of its decision, the Court made the surprising statement that:

> "We do not feel compelled to relax this burden ['of persuasion'] in cases where, as in this, *the friendly nationality of the claimants is unquestioned.*" (Emphasis supplied)

Aside from the curious nature of the suggestion that the burden of proof to be met by persons suing under Section 9(a) who are admittedly non-enemies should be as onerous as that of persons whose non-enemy nationality is questioned, this Court's statement and application of the rule is directly in conflict with the rule of proof adopted by the United States Government and its Allies in binding International Agreements.

The United States Government and its Allies have adopted and applied, in the case of Japan, a liberal rule of identification with respect to forced transfers of property of the very kind involved in the instant case. Thus, the Policy Directive on Restitution, approved by the Far Eastern Commission on July 29, 1948, and the directive to SCAP based on this policy decision specifically provided [Department of State, Documents and State Papers, Vol. I, No. 6, Sept. 1948, p. 429]:

> "13. In applying standards of identification with respect to claims for looted property, the Supreme Commander for the Allied Powers should observe the following principles:
>
> "(a) In case of doubt, the presumption should be in favor of the claimant country whenever permitted by the broadest application of law, equity and common sense."

There is no question that this liberal rule of identification should have been applied by this Court, and that its application would have required reversal of the trial court's decision. For, even without the Vesting Order and Decision, the circumstantial evidence as to identity was sufficient proof. (J.A. 167, 169-173, 185, 189, 199, 202, 203, 212, 216, 300, 301, 302).

6. Conclusion.

It is respectfully urged, therefore, that this appeal should be reheard en banc by the Court. In any event, Appellant BPI urges that it is entitled to a rehearing and a specific ruling on the constitutional issues raised by this petition.

Respectfully submitted,

Joseph B. Friedman
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Washington 6, D. C.

Attorneys for Appellant Bank of the Philippine Islands

Certificate of Counsel

We certify that this petition for rehearing is presented in good faith and not for delay.

Joseph B. Friedman
Melville E. Locker

Certificate of Service

I, Joseph B. Friedman, an attorney for Appellant Bank of the Philippine Islands, in the above-entitled action, hereby certify that on the 18th day of December, 1959, I served the attached Petition of the Appellant Bank of the Philippine Islands for Rehearing or Rehearing En Banc upon Mr. Ben Ivan Melnicoff, an attorney for Appellant Philippine National Bank, by leaving a copy at his office at 821 15th Street, N. W., Washington 5, D. C., with the person in charge thereof, and upon Mr. Dallas S. Townsend, an attorney for Appellees William P. Rogers and Ivy Baker Priest, by leaving a copy at his office at 101 Indiana Avenue, N. W., Washington 25, D. C., with the person in charge thereof.

Joseph B. Friedman
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Washington 6, D. C.

Attorney for Appellant Bank
of the Philippine Islands

Orders of the Court of Appeals Staying Transmission of Opinion and Certified Copy of Judgment

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1959

No. 14,807

BANK OF THE PHILIPPINE ISLANDS, APPELLANT,

v.

WILLIAM P. ROGERS, Attorney General of the United States and Successor to the Philippine Alien Property Administrator, et al., APPELLEES.

Before: PRETTYMAN, Chief Judge, in Chambers.

ORDER

Upon consideration of appellant's motion for stay of transmission of opinion and certified copy of the judgment of this court pending application to the Supreme Court for review on writ of certiorari, and it appearing that no objections have been filed, it is

ORDERED that transmission of the opinion and certified copy of the judgment of this court to the District Court is stayed until September 26, 1960.

Dated: September 7, 1960

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1960

No. 14,807

BANK OF THE PHILIPPINE ISLANDS, APPELLANT,

v.

WILLIAM P. ROGERS, Attorney General of the United States and Successor to the Philippine Alien Property Administrator, et al., APPELLEES.

Before: PRETTYMAN, Chief Judge, in Chambers.

ORDER

Upon consideration of appellant's motion to further stay transmission of the opinion and certified copy of the judgment of this court, and it appearing that no objections have been filed, it is

ORDERED that transmission of the opinion and certified copy of the judgment of this court to the District Court is stayed to and including October 26, 1960.

Dated: October 3, 1960